



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 558

IN THE MATTER
OF
ARMAND GAGNE

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Armand Gagne ("Gagne") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 13, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gagne. The Commission has concluded its inquiry and, on July 11, 1995, found reasonable cause to believe that Gagne violated G.L. c. 268A.

The Commission and Gagne now agree to the following findings of fact and conclusions of law:

1. Gagne was, during the time relevant, the chairman of the Board of Selectmen for the town of Dighton.^{1/} As such, Gagne was a municipal employee as that term is defined in G.L. c. 268A, §1(g).
2. The town allows elected officials, including selectmen, to participate in many of the benefits enjoyed by full-time employees, such as the county retirement fund, the health insurance program, and the tuition reimbursement program.
3. In the late 1970s or early 1980s, sometime prior to Gagne's becoming a town official, the town implemented the tuition reimbursement program to encourage town employees to further their education in work-related areas. For a number of years in the 1980s, the town budgeted no money for the program. The town reinstituted the program for fiscal year 1989 with a \$5,000 appropriation made at the May 2, 1988 Town Meeting. Additional appropriations of \$5,000 and \$4,800 were made for fiscal years 1990 and 1991, respectively.
4. The tuition reimbursement program provides the following procedure:
 - a. The employee/applicant must request and receive prior approval of the Department Head before registration and attendance at class(es).
 - b. The course(s) must be job-related.
 - c. The tuition payment will be paid upon successful completion of the course(s).
 - d. Books, teaching aids and materials, lab fees, student fees are *not* covered under this policy.
- (5) And finally, the final financial payment requires approval of the Board of Selectmen.
5. In early 1991 Gagne informed the two other selectmen on the Board, Gene Nelson ("Nelson") and Frank Costa ("Costa"), that he planned to attend town management courses at Suffolk University. Gagne requested

that they approve his participation in the tuition reimbursement program.

6. In a letter dated March 20, 1991, Nelson and Costa advised Suffolk University that the town “will be responsible for the tuition cost of Armand Gagne’s attendance in your program for the Spring semester, 1991. The monies have been appropriated into the ‘Town Tuition Account,’ at the Annual Town Meeting of May 7, 1990.” Thus, Nelson and Costa approved the payment of Gagne’s tuition for the Spring 1991 semester.

7. Throughout fiscal years 1992 and 1993, Gagne continued to enroll in courses at Suffolk University for each of the subsequent semesters. According to Nelson and Costa, they were unaware that Gagne’s program was continuing beyond the Spring 1991 semester.

8. Between April 3, 1991, and December 30, 1992, Gagne and at least one of the other two selectmen approved nine treasury warrants authorizing a total of \$22,447 in tuition payments to Suffolk University for Gagne.^{2/}

9. For various reasons, neither Costa nor Nelson reviewed the nine warrants prior to signing them.

10. Between one and nineteen days before the Board of Selectmen authorized each of the nine treasury warrants, Gagne submitted a Suffolk University tuition invoice to the town accountant for payment. In his capacity as chairman of the Board of Selectmen, and therefore “Department Head” for the purposes of the tuition reimbursement policy, Gagne approved each invoice for payment.

11. During his enrollment at Suffolk University, Gagne twice participated as a selectman in appropriating funds for the tuition reimbursement account without publicly disclosing his financial interest in those funds:

a. At a November 4, 1991 special Town Meeting, the town approved Gagne’s motion to appropriate and transfer \$4,800 to fund the tuition account for fiscal year 1992; and

b. At a June 30, 1992 special Town Meeting, Costa motioned to transfer an unused \$10,000 appropriation to the tuition reimbursement account “to fund education, training and tuitions, (#902) within general government.” When a citizen questioned the propriety of that transfer, Gagne and Police Chief Spratt explained that the \$10,000 was needed to pay for police officer retraining, estimated at \$750 per police officer. After the transfer was approved, the town learned that the police retraining would cost only a small administrative fee of approximately \$200. Therefore, the additional \$10,000 remained available to fund Gagne’s tuition.

12. During fiscal years 1991 through 1993, the town appropriated a total of \$24,400 to fund the tuition reimbursement account.^{3/} The amounts paid out from the account during those years were \$980 to Fire Department employees, \$200 for the Police Department retraining, and \$22,260 to Suffolk University for Gagne,^{4/} leaving a balance of \$960.

13. Gagne completed his course work at Suffolk University in March 1993, earning a Master of Public Administration degree.

14. Section 19 of G.L. c. 268A prohibits a municipal employee from participating^{5/} as such an employee in a particular matter^{6/} in which to his knowledge he has a financial interest.

15. The decisions and determinations by the Board of Selectmen to authorize payment of Gagne’s tuition, and to transfer funds to the tuition reimbursement account, were particular matters.

16. Gagne participated as a selectman in each such decision and determination as follows: by approving the tuition invoices for payment as “Department Head”; by signing the treasury warrants after personally ensuring that the tuition payments would be included therein;^{7/} and by moving to have funds transferred or explaining such transfers at special Town Meetings.

17. As a student enrolled at Suffolk University, Gagne knew that he had a financial interest in these particular matters because they would result in his tuition being paid.

18. Accordingly, by participating in his official capacity in the decisions to authorize tuition payments and to transfer funds to the tuition reimbursement account, particular matters in which he had a financial interest, Gagne violated G.L. c. 268A, §19.

19. Gagne fully cooperated with the Commission throughout its investigation.

In view of the foregoing violations of G.L. c. 268A by Gagne, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Gagne:

(1) that Gagne pay to the Commission the sum of five thousand dollars (\$5,000) as a civil penalty for his course of conduct in violating G.L. c. 268A, §19; and

(2) that Gagne waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 22, 1996

¹Gagne did not seek re-election as a selectman, pending resolution of this matter.

²The warrants are dated as follows: April 3, 1991; July 3, 1991; November 6, 1991; February 12, 1992; July 22, 1992; August 19, 1992; August 26, 1992; September 30, 1992; and December 30, 1992. Three of the warrants were authorized by Gagne and only one other selectman. The other six were signed by all three selectmen.

³The town appropriated \$4,800 for each of fiscal years 1991, 1992, and 1993, and transferred an additional \$10,000 for fiscal year 1993, as described above.

⁴Suffolk University reimbursed the town \$187 after Gagne challenged the imposition of a \$225 executive fee. Thus, there is a \$187 difference between tuition costs approved on the nine treasury warrants, \$22,447, and the tuition actually paid, \$22,260.

⁵"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

⁶"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

⁷Ordinarily, the signing of a treasury warrant for payroll without more does not amount to participation. *EC-COI-87-32* (signing payroll warrant is not personal and substantial participation unless the payroll item is in dispute; signing the warrant is peripheral to certification of the hours worked and included therein). In this case, however, Gagne signed each treasury warrant after personally certifying his own tuition invoices to be included therein, thereby ensuring at every step that his tuition would be paid. See also *id.* footnote 2 (This opinion is limited to the certification of a payroll by an appointing authority which does not actively supervise employees").